

1 on the computer, but we go straight to Recent Folders  
2 and it's got a -- a list with names on it, right?

3 A. Yes, sir.

4 Q. And then somebody clicks "Boy Scout David,  
5 Part 2-3;" is that right?

6 A. That's the name of the file, yes.

7 Q. Okay. And somebody plays that and the video  
8 comes on. So we're getting that played, right?

9 A. Yes.

10 Q. And then somebody later clicks on the  
11 deletion. And before those pop up -- those thumbnails  
12 come up -- they don't just come up when you pop on them  
13 or when you click on that. What you get is a -- a  
14 wording, a description, and you click on that  
15 description; and that's what gives you the thumbnails,  
16 right?

17 A. I would not say that's an accurate  
18 characterization of how that works. In fact, with  
19 Windows and certainly with Windows Vista, it has the  
20 ability to store thumbnails to allow for any folder  
21 containing any sort of photograph to have a thumbnail  
22 version of that photograph for the purposes of seeing  
23 that.

24 Q. Well, what is the case in this -- on this  
25 instance on this computer?

1           A.    Well, by my accounts there's thumbnail  
2 versions of that.

3           Q.    Okay. But did you have to click on something  
4 to get those thumbnails?

5           A.    You would have to access the folder in which  
6 the thumbnails reside in -- in which the pictures reside  
7 in. Sorry.

8           Q.    Okay. Just for demonstrative purposes, you  
9 click on the recycle bin, right?

10          A.    Okay.

11          Q.    And what the recycle bin is going to give is  
12 descriptions of files. It may be holiday vacation, or  
13 it may be anything. It may be something horribly  
14 suggestive, but it's going to give you those words. And  
15 then you click on this (Indicating); and then up will  
16 pop what's there, correct?

17          A.    I'm not sure I follow your question. Are you  
18 saying that "holiday vacation" is a folder that has  
19 pictures within that folder?

20          Q.    Yes, sir. Yes, sir.

21          A.    Certainly, that's one way that they could be  
22 viewed. In some instance the thumbnail will actually  
23 put thumbnails of the photos on a folder -- on this  
24 folder so that you would see the thumbnails from the  
25 folder view as well.

1 Q. But that's not what the situation is here, is  
2 it? In here we've got words, some word that was  
3 suggestive, "Boy sucks man" or whatever it was. That  
4 was clicked on, because there has been testimony. It  
5 said this "boy sucks man" or whatever and then you click  
6 on that and that's when you get the -- the thumbnails,  
7 correct?

8 A. No, sir, that's not my testimony actually.  
9 The -- the video in question that we're discussing is  
10 actually an active file stored on the external hard  
11 drive. That's not the name of any of the files and  
12 certainly not the name of files that were here. In  
13 fact, the name of the files here are not suggestive at  
14 all. They're simply numerical. So it would not be a  
15 suggestive name at all. It's only a number that would  
16 show up.

17 And, again, to answer question, I mean,  
18 that -- those are two different places, that's two  
19 different files. The pictures that are being -- that  
20 are viewed that were representative of the pictures of  
21 the thumbnail, are simply that they're pictures that  
22 would be represented in a smaller version so that a user  
23 would be able to see those in what's known as a  
24 thumbnail size version.

25 And those files were in the recycle bin.

1 That's separate from the video that's stored in an  
2 active file on the -- on the hard drive -- or the  
3 external drive. Sorry.

4 Q. There is no doubt that somebody -- it appears  
5 nobody other than Ms. Killien went in and accessed both  
6 the recent files to see what had been put on there  
7 recently as well as the recycle bin. That's true, isn't  
8 it?

9 A. She accessed one file in the recent files.

10 Q. Yes.

11 A. One specifically.

12 Q. And, also, accessed the recycle bin, correct?

13 A. Yes.

14 MR. JAMES: I'll pass the witness.

15 DIRECT EXAMINATION

16 BY MR. PHELPS:

17 Q. When you opened up that recycle bin on the  
18 external drive, would you see thumbnails?

19 A. Yes, sir.

20 Q. And is that what happened in this case?

21 A. Yes.

22 Q. So Ms. Killien didn't have to see a folder and  
23 then click on that to make another step to go in and  
24 find those thumbnails, did she?

25 A. There is no indication of that.

1 MR. PHELPS: Okay. That's all I have,  
2 Judge.

3 MR. JAMES: Nothing further.

4 THE COURT: You can step down, sir.

5

6

7 (End of requested excerpt of  
8 proceedings.)

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1 THE STATE OF TEXAS       )  
2 BRAZOS COUNTY, TEXAS    )

3 I, Susan R. Rainwater, Visiting Court Reporter  
4 in and for the 272nd Judicial District Court of Brazos  
5 County, State of Texas, do hereby certify that the above  
6 and foregoing contains a true and correct transcription  
7 of all requested excerpted portions of evidence and  
8 other proceedings as requested to be included in this  
9 volume of the Reporter's Record, in the above-styled and  
10 numbered cause, all of which occurred in open court or  
11 in chambers and were reported by me.

12 I further certify that this Reporter's  
13 Record of the proceedings truly and correctly reflects  
14 the exhibits, if any, admitted by the respective  
15 parties.

16 I further certify that the total cost for  
17 the preparation of this expedited copy of the Reporter's  
18 Record is \$610.00 and was/will be paid by Mr. Jim James.

19 MY OFFICIAL HAND this the 26th day of  
20 February, 2010.

21  
22  
23  
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25  
  
Susan R. Rainwater, Texas CSR #6561  
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February 26, 2010

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TRIAL COURT CAUSE NO. 09-02484

THE STATE OF TEXAS

§ IN THE DISTRICT COURT OF

v.

BRAZOS COUNTY, TEXAS

GREGG CARL BAIRD

§ 272ND JUDICIAL DISTRICT

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MOTION TO SUPPRESS  
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On the 26th day of February, 2010, the following proceedings came to be heard in the above-entitled and -numbered cause before the Honorable Travis B. Bryan III, Judge presiding, held in Bryan, Brazos County, Texas:

Proceedings reported by computerized stenotype shorthand.

COPY

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1. P R O C E E D I N G S

2. (Open court, defendant present, no jury,

3. 2:14 PM.)

4. THE COURT: All right. You are still under  
5. oath. Go right ahead.

6. MR. PHELPS: May I proceed?

7. THE COURT: Yes, sir.

8. ROSE MARIE HUBBARD,  
9. having been first duly sworn, testified as follows:

10. CROSS-EXAMINATION

11. BY MR. PHELPS:

12. Q. Hi, Rose. How are you?

13. A. I'm doing fine. Thank you.

14. Q. I'm sorry. Would you state your name for the  
15. court reporter, please?

16. A. Yes. My name is Rose Marie Hubbard.  
17. H-U-B-B-A-R-D.

18. Q. Let me start first of all by asking the last  
19. time we were talking when you were testifying was a  
20. couple of days ago. You indicated at that time that you  
21. had examined the event logs of the computer; is that  
22. right?

23. A. Yes, sir.

24. Q. And I think we established, and correct me if  
25. I'm wrong, that's all you looked at, correct?

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1 A. No, sir. I looked at several computer logs.

2 Q. Okay. What kind of computer logs did you look  
3 at?

4 A. I looked at the registry file listings. I  
5 looked at the master file index.

6 Q. We had introduced it at pretrial Exhibit No. 8.  
7 State's Pretrial Exhibit No. 8. That is your basically  
8 listing, I guess, of what happened on this computer  
9 according to what you looked at?

10 A. Yes, sir. Those are just my notations as to  
11 the events.

12 Q. Is this the only report you generated or --

13 A. No, sir, that's just what I brought with me to  
14 recall the dates and times.

15 Q. What other notes or reports did you generate?

16 A. I have an event log with the sleep time and  
17 wake time screen shot.

18 Q. Did you do any kind of a report for Mr. James?

19 A. No, sir.

20 Q. Did you, I mean, write him a letter or any  
21 e-mails indicating the results of your findings?

22 A. No, sir.

23 Q. And is this information in State's Exhibit  
24 Pretrial Exhibit No. 8 -- is that based on all of those  
25 various things you looked at or just the event logs?

Page 258 Katherine B. Kyriell, CSR

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1 A. The sequence, the time lines, that you have  
2 here are from event logs and the master file index as  
3 well.

4 Q. Okay. And just to refresh the judge's memory,  
5 you indicate that the, as I recall your testimony, at  
6 5:21 the day before, which would have been May 7th,  
7 until 9:06 PM on May 8th the computer was asleep?

8 A. Till -- yes, sir, May 8th at 9:06 PM.

9 Q. Is when the -- according to your note -- when  
10 the computer wakes you?

11 A. Yes, sir.

12 Q. Do you need this in front of you?

13 A. Yes, sir, I do. I have the --

14 Q. Do you have a copy of it in front of you?

15 A. I do not.

16 MR. PHELPS: May I approach, your Honor?

17 THE COURT: You may.

18 MR. PHELPS: I don't know if we have those  
19 exhibits with us?

20 THE COURT: Yes, I think we may. Look  
21 through those and see. No, it's not here.

22 MR. PHELPS: May I?

23 THE COURT: Yeah.

24 Q. (BY MR. PHELPS) This indicates at 9:06 the  
25 computer wakes up?

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1 A. Yes, sir.

2 Q. And your testimony, I believe, yesterday was  
3 that basically from 5:21 the day before till 9:06  
4 nothing happened on that computer? It was asleep the  
5 entire time?

6 A. Yes, sir. There's a sleep mode with wake up  
7 noted.

8 Q. And the wake up mode was 9:06 PM?

9 A. Yes, sir.

10 Q. We talked previously about that something  
11 happened at 6:06?

12 A. Yes, sir.

13 Q. And that was, according to Mr. Odom, at least  
14 consistent with there being a CD put in that computer at  
15 that time; do you remember that?

16 A. I remember you asking me about it.

17 Q. And is it your opinion that that is not  
18 consistent with a CD being put in?

19 A. It is my opinion that is a CAB file which would  
20 not be consistent with --

21 Q. Okay. Your opinion is that it is a CAB file  
22 that would not be consistent with?

23 A. Someone inserting a CD to wake up the machine.

24 Q. Why not?

25 A. To play a machine, you would have to have some

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1 type of application to open up the computer, an  
2 application to run some type of media such as music.

3 Q. Okay. Did you indicate yesterday that you  
4 believed that would have been more consistent with the  
5 computer being asleep and updating itself?

6 A. Yes, sir.

7 Q. Now, if you have an updating like that while  
8 the computer is asleep, would you also have a  
9 commensurate entry in the computer somewhere something  
10 called MC update?

11 A. There could be updates going on in the  
12 background. That is not an area that I looked into.

13 Q. But, I mean, I guess my question is: If the  
14 computer is asleep and it does in fact -- that's what  
15 explains this 6:06 entry -- update itself, would there  
16 be some entry in addition to that called MC update, some  
17 indication that was accessed or that it generated  
18 something on the computer with respect to MC update?

19 A. Again, I don't want to speculate to what I did  
20 not look into. I did see some MC updates in the master  
21 file index. I did not go back to reserve to see what  
22 the effect was to CAB file to the MC update. That was  
23 not part of my scope.

24 Q. If you are correct, however, that at 6:06 this  
25 was, in fact, an update such that MC update should have



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1 been indicated on the computer, would you have seen that  
2 if you had looked?

3 A. I did see that. I saw entries to that effect.  
4 What I cannot tell you is if it was an update of some  
5 sort or what have you. These entries were in the  
6 computer. They could have happened while there could  
7 have been some system processes running in the  
8 background, or there could have been some updates  
9 running in the background while it's asleep. I cannot  
10 tell you what because that was not my assigned task. I  
11 did not look into that.

12 Q. I understand that that was not your assigned  
13 task. I'm not asking you that right now. What I'm  
14 asking is your expertise. If, in fact, that entry at  
15 6:06, something happened; do you agree with that?

16 A. Yes, something happened. A file was accessed.

17 Q. If, in fact, the explanation is that while the  
18 computer was asleep, the commuter was doing some  
19 updating as you testified previously?

20 A. Possibly, yes.

21 Q. Would it also at the same time generate some  
22 indication on the computer of access to that MC update?

23 A. There could have been. Again, I don't know. I  
24 did not delve into that as to what file it was coming  
25 from as to what updates. I can tell you there were some



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1 updates made. There was an MC update, I believe, at  
2 0:55.

3 Q. Let me try one more time. I'm not asking you  
4 what you actually did. I'm not asking you based on what  
5 you did on the computer. What I'm asking you is you  
6 have given an explanation that that 6:06 entry rather  
7 being some indication of a CD being put in was an update  
8 while the computer slept. Do you agree with that?

9 A. I'm sorry?

10 Q. Do you agree that's what you said?

11 A. It's possible it was done.

12 Q. Did you not testify previously that you believe  
13 it was an update?

14 A. I believe it's possible, yes.

15 Q. Okay. Okay. Now, I'm asking you just globally  
16 in your experience as a forensic computer expert if  
17 that, in fact, was the computer updating itself while it  
18 was in sleep mode would there be some indication on the  
19 computer that you could look at for that time to see if  
20 MC update reference?

21 A. There could possibly be an MC update reference.

22 Q. So are you saying it could update itself and  
23 not have that reference?

24 A. I would think it would tie back to reference.  
25 Again, I'm not an expert in Microsoft updates.

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1 Q. Okay. Okay. I want to talk to you just  
2 briefly about the times on the computer. And on your  
3 time line, you have given a number of times 9:06 PM,  
4 9:15, and so on through 1:41 AM. And I presume the  
5 thrust of this is that nothing happened on this computer  
6 before 9:06; is that correct?

7 A. What I'm referring to is just user activity.

8 Q. Okay.

9 A. A lot of activity occurred prior to that but  
10 not -- my point is from user activity when was that  
11 machine powered up and what happened after that.

12 Q. Well, I guess what I want to try and see if we  
13 can clear up is we've had a lot of conversations about  
14 times. Is it possible for a computer -- computers have  
15 an internal clock, right?

16 A. Yes, sir.

17 Q. And the time that it shows and the time it  
18 registered stuff on like the event log, such is  
19 dependent on how that computer internal clock is set; is  
20 that correct?

21 A. Yes, sir.

22 Q. I can go into a commuter, and I can set that  
23 for Central Time. I can set it to Pacific Standard  
24 Time. I can set it for Hong Kong time if I wanted to,  
25 right?

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1 A. Yes, sir.

2 Q. And then that computer when you look at the  
3 event logs would be recording that time, not the time  
4 where the commuter physically is?

5 A. The event log is going to register the machine  
6 time. Is that what you're asking me?

7 Q. Yes.

8 A. Yes.

9 Q. And that machine time is dependent on whatever  
10 you set it at?

11 A. Yes, whatever the machine is set at.

12 Q. I can go into my computer, my PC, go to the  
13 internal clock, set it for California time?

14 A. Yes, sir.

15 Q. Then anything I do on it, the event log is  
16 going to register that happened according to California  
17 time?

18 A. Yes, sir.

19 Q. Did you look to see what particular -- how this  
20 clock, particular computer was set?

21 A. Yes, sir.

22 Q. And how was it set?

23 A. It was set for Central Time, Central Standard  
24 Time.

25 Q. How did you check that off?

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1 A. Through the registry.

2 Q. Did you ever look to see what the internal  
3 clock said and compared it to the actual time then?

4 A. The data registry just tells you which time  
5 that it is, and I can go by what I see at that time.

6 Q. Okay.

7 A. It also shows in the event log the consistency  
8 with the MFT, the master file index, and so on. That's  
9 how I determined the machine time.

10 Q. Is it possible that the times here on your time  
11 line -- the one that says 9:06 PM -- it actually could  
12 have been 8:06 PM?

13 A. Yes, sir.

14 Q. Is that the fact you found?

15 A. No, sir.

16 Q. I mean, would it surprise you that both  
17 Investigator McCune --

18 MR. JAMES: Objection. That's stating  
19 facts not in evidence.

20 THE COURT: Sustained.

21 MR. PHELPS: Rules of evidence do not  
22 apply. And I can give her facts and ask her to give her  
23 opinion based upon those facts. Also even if --

24 THE COURT: You asked her hypothetical  
25 question.

1 actually then housed or headquartered; are you familiar  
2 with that?

3 A. Basically somewhat, yes.

4 Q. You have done that before, have you not?

5 A. I have got gone in and looked at Web sites but  
6 not necessarily going into IP addresses.

7 Q. Just looking at this document, this Web site  
8 mpwh.net gives an IP address, does it not?

9 A. Yes, sir, it does.

10 Q. That IP address, that same one, is for where?

11 A. It says New York.

12 Q. And New York is an hour ahead of us, right?

13 A. Yes, sir, it is.

14 Q. So just so we are clear, at least it looks like  
15 the times that are listed on this chat log are probably  
16 an hour ahead of our time?

17 A. That could -- yes, that could possibly be.

18 Q. And the computer itself could be an hour ahead  
19 of our time?

20 A. Yes, sir, there's a lot of variables.

21 Q. And oftentimes when you see times on computers,  
22 computers can be off two or three minutes. One can say  
23 8:53, and another can show 8:50. That doesn't mean  
24 they're inconsistent, does it, necessarily?

25 A. That's correct. It can be off an hour or an

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1 hour and two minutes. There's variables.

2 Q. One thing, however, we did determine is that  
3 the chat that you reviewed, right?

4 A. I just perused it. Again, that fell outside my  
5 assigned task.

6 Q. According to your time line, the video itself  
7 was accessed at 9:15 PM?

8 A. Yes, sir.

9 Q. And the chat entry regarding that video by  
10 Ms. Killian where it says, "Okay, I opened one video.  
11 It confirms child porn," was at 9:14 PM, right?

12 A. Yes, sir.

13 Q. So at least it looks as though the times that  
14 are on -- at least with respect to that particular  
15 transaction --

16 A. I'm sorry?

17 Q. At least with respect to that particular  
18 transaction, the time that she posted it, her comment,  
19 is the same time that she actually accessed that video?

20 A. No, sir. I'd have to disagree with you.

21 Q. How so?

22 A. Because, like I stated on Tuesday, I cannot  
23 testify to the times from those servers. I can only  
24 testify to machine time.

25 Q. Okay. Well, I have just shown you that the

1 server is located Albany, New York, which is an hour  
2 ahead?

3 A. Yes, sir.

4 Q. But put that aside for a second. If the chat  
5 says 9:14 --

6 A. Yes, sir.

7 Q. -- and your own examination on the computer  
8 shows that she looked at that video at 9:15 --

9 A. Yes, sir.

10 Q. -- that's pretty consistent, isn't it?

11 A. If you're going to separate the server times,  
12 the server times probably remain consistent; but if you  
13 look at the computer's time, what time did that entry  
14 come into that computer, that computer will note the  
15 date and the time. So you don't depend on one. You  
16 depend on both to make that determination, which is what  
17 I did. I did not rely on one time.

18 Q. Which time?

19 A. Because there are so many variables. As you  
20 said, there could be. Could come from New York. That's  
21 an hour ahead. We're Texas. We're Central. An hour  
22 behind. The server could have been off two or  
23 three minutes. The machine could have been off two or  
24 three minutes.

25 So I don't look at one log. I look at



1 several. And I see at what time this entry, the chat  
2 log that you refer to, comes into the machine. The  
3 machine notes that time. That's the time that I go  
4 with.

5 Q. Okay. But --

6 A. Does that make sense?

7 Q. According to the machine, she accessed that one  
8 video at 9:15?

9 A. Yes, sir.

10 Q. According to the chat, she says, "I opened one  
11 video. It showed confirmed child porn." That happened  
12 at 9:14.

13 A. Yes, sir, I understand.

14 Q. Does that indicate we have got some consistency  
15 between these in terms of time?

16 A. Again, I have to answer it, if you're looking  
17 at the server time versus the machine time, the machine  
18 time when this entry that you refer to, this chat log,  
19 when it comes in it is noted on the machine. That  
20 machine time is noted on that little sheet that you  
21 have.

22 Q. Okay. So I mean the thrust of what you're  
23 telling me is there are so many variables you can't tell  
24 me?

25 A. No, sir. I can tell you -- I can tell you



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1 definitively what time that entry came into that  
2 machine.

3 Q. Well, no, you can't. Did you just testify that  
4 that entry about her opening that video -- does it not  
5 say on this 9:15, right?

6 A. Yes, sir, it was opened on that machine at  
7 9:15.

8 Q. So what you're saying is that the computer  
9 reflects 9:15? You're not saying that's the exact --  
10 that's the time, in fact, that that occurred? Do you  
11 understand what I'm asking?

12 A. I believe so. If you're asking me what time  
13 that file, that ABI file, was opened, 9:15 PM, if you're  
14 asking me what time the chat log was introduced into  
15 that computer -- the server over here in New York may  
16 say 8:42. His, when it comes across onto his machine,  
17 it's going to register. The computer is going to put a  
18 time on there. It's going to state 9:42. It's the same  
19 file. But New York has it at 8:42. His machine has it  
20 at 9:42. That is the log I go by. I don't care about  
21 New York, Singapore, Australia. I care what comes in on  
22 that machine at that time.

23 Q. But, again, that's not my question.

24 A. Okay. I'm sorry.

25 Q. A moment ago you said you could definitively

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1 state that it happened at 9:15 when this entry is.

2 That's when the machine says this happened, right?

3 A. That video file was opened up.

4 Q. There is a difference between what the machine  
5 says in some circumstances and what actually is the  
6 case; would you agree with me?

7 A. No, I would not. If the log says that an entry  
8 was made at that time, that entry was made. I am there  
9 to read that --

10 Q. Okay. If I am on this computer --

11 A. Yes.

12 Q. -- I access this video according to the  
13 machine.

14 A. Yes.

15 Q. And machine's clock at 9:15. That's what the  
16 machine says.

17 A. Yes.

18 Q. Is it possible that I could look at my clock,  
19 my watch --

20 A. Yes.

21 Q. -- and it say 8:15 Texas time?

22 A. That is possible.

23 Q. Okay. So it is not -- you cannot say  
24 definitely. That's kind of the point of my question.  
25 You cannot say definitively the times that these things

1 happen? Only the time that the computer says they  
2 happened?

3 A. That is correct, at the time that the computer  
4 says it happened. And then we also look at the master  
5 file index to see the sequence of events, and the  
6 sequence of events are consistent with those times,  
7 those date and times. So one could not have happened  
8 before the other.

9 Q. I understand that. Relative to the machine's  
10 internal clock?

11 A. Plus the sequence of events. The natural order  
12 reflects the sequence of events that occurred from 9:06  
13 PM until that chat log was put on that -- till it came  
14 in or was introduced into that computer.

15 Q. Is there -- and, again, that's not the  
16 question I'm asking. But just so that we're clear, I  
17 understand that you're saying that the computer's  
18 internal clock is going to be consistent with respect to  
19 its own clock, right?

20 A. Yes.

21 Q. That doesn't mean it's necessarily consistent  
22 with the actual time on my wrist, right?

23 A. That is correct.

24 Q. Okay. And in this case did you, in fact, find  
25 that the internal clock of this computer was one hour

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1 ahead of the time that it actually -- that it actually  
2 was?

3 A. No, I did not.

4 Q. Did you check?

5 A. No, I did not.

6 Q. All right. With respect to the things that  
7 Dawn Killian said she did on the computer, we know she  
8 accessed one video; is that correct?

9 A. One video. That's correct.

10 Q. No evidence she accessed any other videos?

11 A. No.

12 Q. Because no evidence that she accessed any other  
13 files other than the recent document file and maybe she  
14 went in the recycle bin?

15 A. That's correct.

16 Q. She's not deep in the computer fishing around  
17 Mr. Baird's stuff, is she?

18 A. Not that I could see, no.

19 Q. In fact, in order to get to the recent  
20 documents on a computer -- what operating system was  
21 this?

22 A. This is going to be Vista Home Premium.

23 Q. On Vista Home Premium to get to the recent  
24 documents folder, you click on the start button on the  
25 lower left-hand corner, right?

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1 A. Yes, sir.

2 Q. And then you move up to recent documents. As  
3 you mouse up and the mouse arrow hits that, it actually  
4 springs out what's in there, right?

5 A. Yes, sir, it creates a little pop-up window.

6 Q. You don't even have to click again?

7 A. No.

8 Q. So one click, mouse up, and there's the file?

9 A. Yes, sir.

10 Q. And that's pretty superficial; would you agree  
11 with that?

12 A. That's average, yes. Nothing -- no other steps  
13 are needed to be taken, if that's what you're asking me.

14 Q. No evidence that you found, and this would be  
15 definitive, that Dawn Killian ever went into my  
16 computer, explored Mr. Baird's files, opened any file  
17 folders, right?

18 A. The only -- that's correct. The only file that  
19 was accessed was the one --

20 Q. Was the one video?

21 A. Yes.

22 Q. And you don't find any evidence that she went  
23 into the recycle bin, but that doesn't mean she didn't;  
24 do you agree with that?

25 A. Yes.

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1 Q. In fact, to get to the recycle bin on Windows  
2 Vista, all you have to do is click the trash can?

3 A. Yes, you click.

4 Q. When you click that trash can, it's going to  
5 give you recycle of the trash on the hard drive, the  
6 resident hard drive of the computer, but also any  
7 external it's hooked up to?

8 A. That's correct.

9 Q. So when Dawn Killian goes into recycle bin, all  
10 she has to do is one click?

11 A. Correct.

12 Q. She could see what's in the recycle bin?

13 A. Well, she can do one double click to open or  
14 one right click to open technically. But, yes, in  
15 general one click.

16 Q. They're very easy to get into?

17 A. Very easy.

18 Q. Not hidden in any way from a user?

19 A. No, sir.

20 Q. In fact, it's intended to be as simple as  
21 possible for somebody just looking at the desktop?

22 A. Yes, sir.

23 Q. Now, you have indicated according to your time  
24 line that there was no Internet activity that began at  
25 -- before 9:54 PM; is that right?

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1 A. Yes, sir. Again, you have the time line.

2 Q. Now, we do know that there is a rather  
3 extensive chat, correct?

4 A. Yes, sir.

5 Q. And in order to do those chats, you have to get  
6 on the computer, right?

7 A. You can use a computer. You can use a cell  
8 phone. There's various ways of getting onto.

9 Q. Can I use one of those?

10 A. You could.

11 Q. My iPhone?

12 A. Yes, sir.

13 Q. I could get on this iPhone right now. Access  
14 mpwh.net, if I was a member. Start a chat thread.  
15 Enter a post.

16 A. Yes, sir.

17 Q. And then monitor those posts. Respond to other  
18 posts. Would you agree with that?

19 A. Yes, sir.

20 Q. So prior to 9:54 if there was no Internet  
21 activity on that computer, Mr. Baird's computer, that  
22 doesn't mean that Dawn Killian wasn't on her iPhone?

23 A. I cannot say one way or another if she was on  
24 her iPhone or not.

25 Q. We know she was on some computer, don't we?



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1 A. Yes, sir.

2 Q. Because there is no Internet activity before  
3 that access of that video, right?

4 A. Before that, no.

5 Q. And at least according to the chat, quite a bit  
6 of stuff happened before she got on and said, "I opened  
7 one video and confirmed child porn."

8 A. Yes, sir.

9 Q. And the chat, obviously, was started before  
10 that?

11 A. The chat was started before what? Because it  
12 was not started before the video was played, not onto  
13 that computer.

14 Q. Aha. Not on that computer?

15 A. That's correct.

16 Q. But it was started before that happened?  
17 Before that entry?

18 A. No, sir.

19 MR. PHELPS: May I approach, your Honor?

20 THE COURT: Yes, sir.

21 Q. (BY MR. PHELPS) I want you to explain to me  
22 then how she could be on at this point in the chat and  
23 not be on a computer before when she starts the computer  
24 or starts the thread.

25 A. For example, this could have been on -- this



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1 thread could have started on the computer. This thread  
2 whichever page it was -- I apologize.

3 Q. This is all one thread.

4 A. It could have been on the iPhone.

5 Q. Okay.

6 A. Or whatever device.

7 Q. But your statement a moment ago -- I think  
8 we're just missing each other here. Your statement a  
9 moment ago is that thread could not have started before  
10 she accessed that video?

11 A. I'm saying --

12 Q. That is what you said a minute ago?

13 A. Okay.

14 Q. Let me just make the statement, and you agree  
15 with this. I think what you intended to say, or I  
16 misunderstood you, was she could not have started that  
17 thread on that computer before she accessed that video.  
18 Is that what you're saying?

19 A. I can testify to any of the -- the files that  
20 came in on this computer according to the master file  
21 index is registered. I can state with certainty that  
22 that particular file that came in on that computer  
23 occurred at a certain time. It happens to match the log  
24 that he has presented to the court. The same verbiage.

25 Q. Okay. Again, I apologize if I'm not making

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1 myself clear. All I want to establish, the only  
2 concession I want from you, is that there was a chat  
3 thread, right?

4 A. There was.

5 Q. At some point in that chat thread she says, "I  
6 opened one video. It confirms child porn." Right?

7 A. Yes, sir.

8 Q. Would you agree with me that all of the entries  
9 on that chat thread before that had to have occurred  
10 before she posted that?

11 A. Before she -- that's where I'm losing you.  
12 Before she posted what?

13 Q. "I opened one video."

14 A. Oh, if you're asking my opinion if this event  
15 occurred before she posted that, yes, it could have  
16 occurred at that time.

17 Q. All of the previous postings in that thread  
18 happened before?

19 A. I disagree with you on the time that those  
20 threads were posted or came -- were introduced into this  
21 computer.

22 Q. Okay. Again, that's not my question.

23 A. Okay.

24 Q. Just looking at the thread itself, if she makes  
25 a post mid-thread, that means the post before it

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1 happened before. Yes or no?

2 A. It could have. Again --

3 Q. How could it be generated before and she could  
4 go into the middle of a chat thread and there's nothing  
5 there and she responds to other threads? All I'm asking  
6 is if you have a chat thread and you have something in  
7 the middle of it, then that means the stuff that  
8 happened before in that chat thread in time happened  
9 before she posted?

10 MR. JAMES: Judge I just want to make sure.  
11 I think they're doing like this. Are you asking,  
12 Mr. Phelps, that the earlier thread, the earlier chat,  
13 occurred before what is in the middle of the --

14 MR. PHELPS: Yes.

15 MR. JAMES: Okay. I think they're having  
16 one of these, Judge. Do you understand the question?

17 THE WITNESS: Yes. And I can't answer if  
18 it occurred in the middle of it or not.

19 MR. JAMES: It occurred. He's talking  
20 about the thread. The earlier posts occurred before the  
21 middle post.

22 THE WITNESS: Yes. Okay.

23 MR. JAMES: That's it.

24 Q. (BY MR. PHELPS) And all I would kind of like  
25 us to agree on is that just because there doesn't appear

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1 anything in your opinion on that computer before 9:54  
2 doesn't mean that Dawn Killian started that thread  
3 prior?

4 A. She may have.

5 Q. In fact, she has to have, right?

6 A. No, sir. Again, because of the time variations  
7 that we discussed previously.

8 Q. And the time variation being that she posted  
9 this at 8:42 PM Albany time, which is an hour ahead, and  
10 the computer internal clock was an hour ahead of our  
11 time. Are those the variations you're talking about?

12 A. If you put those conditions in place, that  
13 could be possible.

14 Q. All right. But you don't have any argument at  
15 all that Dawn Killian could have gotten on iPhone or  
16 different phone? In fact, she must have to start this  
17 thread because it did start on that computer?

18 A. I can't testify to anything she did with the  
19 iPhone or any other device with that log.

20 Q. You don't have any argument -- and I'm going to  
21 make this as simple as I can --

22 MR. JAMES: Objection. Sidebar.

23 MR. PHELPS: I'm trying to make this as  
24 quick and concise as I can, your Honor.

25 THE COURT: Go ahead.

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1 MR. PHELPS: I think I have right to do  
2 that.

3 Q. (BY MR. PHELPS) I can start a chat on one  
4 computer and continue it later on another. Do you  
5 agree? Yes or no?

6 A. Yes, I agree.

7 Q. Thank you. Thank you. And, again, you saw no  
8 evidence at all on this computer that would suggest from  
9 the computer that Dawn Killian did not have consent to  
10 be on that computer?

11 A. I have no way of knowing if she had consent or  
12 not to get on computer.

13 Q. Well, you do know there were no passwords?

14 A. That is correct.

15 Q. You do know there was no inscription?

16 A. That's correct.

17 MR. PHELPS: All right. I pass the  
18 witness, your Honor.

19 MR. JAMES: Call Bill Odom.

20 THE COURT: You may step down.

21 Mr. Odom is still under oath; is that  
22 right?

23 WILLIAM ODOM,  
24 having been first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. JAMES:

2 Q. Mr. Odom, you and I visited the other day?

3 A. Yes, sir.

4 Q. And I made a mistake, I guess. I asked you  
5 when you click that -- what do you call it? It's not  
6 the recent folder. What is it? It's what you have  
7 gotten through with. You have deleted items.

8 A. The recycle bin.

9 Q. The recycle bin?

10 A. Yes, sir.

11 Q. I asked you, I said, "Well, that wouldn't show  
12 pop-ups. That would show words." You remember me  
13 asking you that?

14 A. I do recall that.

15 Q. You said, "No, not necessarily." Do you  
16 remember saying that?

17 A. Yes, sir.

18 Q. That depends on the view which way it is set,  
19 correct?

20 A. That's correct. Yes, sir.

21 Q. That's correct?

22 A. Yes, sir.

23 Q. And you read -- we've talked a lot about the  
24 chat here, haven't we?

25 A. Yes, we have.

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1 Q. And you read through that, didn't you?

2 A. I did.

3 Q. It's at a different place. These are -- is  
4 this the same thing? Just so we're clear, this is the  
5 same thing? It's just in a different format?

6 A. May I see that?

7 Q. Sure.

8 A. From what I see here, it appears to be the  
9 same.

10 Q. Now, where are we? This has the times on it?

11 A. Yes, sir.

12 Q. 9:03. Where would 9:03 be on that one?

13 A. It would be -- there's an entry for 9:03.

14 MR. PHELPS: May I see what you're looking  
15 at?

16 MR. JAMES: Yeah.

17 MR. PHELPS: You're just talking about --

18 MR. JAMES: Yeah.

19 Q. (BY MR. JAMES) So it can either show pop-ups,  
20 or it can show words or descriptions depending on how  
21 the view is set, correct?

22 A. I would agree with that, yes.

23 Q. And you read everything Ms. Killian said,  
24 right?

25 A. I did read through that, yes.



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1 Q. And there was something very important in  
2 there. And you didn't mention this in our discussion  
3 earlier. She says, "I am not sure what the legal  
4 descriptions are for child porn. But I did open the  
5 folder and flip it to the thumbnail view."

6 A. Yes, sir.

7 Q. So, apparently, while Mr. Phelps has been  
8 talking about, well, it's just showed up automatically.  
9 It showed up after she knew to go to view and change the  
10 computer setting from descriptive words to the  
11 thumbnail, correct?

12 A. I'm sorry. Can you repeat that just to make  
13 sure I'm clear?

14 Q. Okay. Mr. Phelps made a while ago, well, it's  
15 just real easy. Just click, click. There you are.  
16 Doesn't take any real knowledge. She only was able to  
17 see those thumbnails after she changed the view setting  
18 on the computer from words to images, pop-ups?

19 A. Well, certainly would have to have -- the  
20 settings would have to be set for thumbnail view  
21 settings.

22 Q. Well, that's what she says she did.

23 A. I understand.

24 Q. "I'm not sure what the legal descriptions are  
25 for child porn, but I did open the folder and flip it to



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1 the thumbnail view." She changed the settings on the  
2 computer so she could see those images, didn't she?

3 A. I can't speak to what she did or didn't do.

4 Q. That's what she says she did?

5 A. I agree with that, yes.

6 Q. Did you know that before I just pointed that  
7 out?

8 A. I had read through that.

9 Q. You didn't mention it in your testimony that  
10 she flipped the thumbnail view. You didn't mention that  
11 the other day?

12 A. No, sir, I wasn't asked that. I didn't mention  
13 it.

14 Q. You knew it was important. You knew it was  
15 important, didn't you?

16 A. Is that a question?

17 Q. Yes.

18 A. I think it's consistent with usage.

19 Q. Did you know it was important?

20 A. Important in what sense?

21 Q. Mr. Phelps talked a lot about the server. The  
22 server isn't necessarily hosted in the locale where the  
23 Web site is, is it?

24 A. Which server are we speaking about?

25 Q. Any server, Mr. Odom. Any server. Whether

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1 it's this chat room, another chat room. If a company is  
2 located in one place, you don't know where the server is  
3 located, do you?

4 A. Well, the server and the company can be located  
5 in two different places. That's true.

6 Q. And on this server you don't know -- excuse me.  
7 The server on this chat room you don't know where it's  
8 located, do you?

9 A. Yes, I believe it's located in Albany, New  
10 York.

11 Q. You know the server is located there?

12 A. Yes, sir, I believe that.

13 Q. Do you believe it -- did you check to see where  
14 the server -- we are not talking about where the company  
15 is located.

16 A. Yes, sir, I understand the question. Based on  
17 the information that Mr. Phelps actually presented  
18 earlier with the IP lookup, that is, in fact, where the  
19 server should be located.

20 Q. You know all of this we talked about -- you  
21 told us under oath the other day that that video was  
22 accessed at 9:15, didn't you?

23 A. Yes, sir.

24 Q. Mr. Phelps has made a major deal about what  
25 time that video was accessed. Is it still your

1 testimony that that video was accessed at 9:15?

2 A. 9:15 based on the computer's internal clock.

3 Q. Tell us about the -- I mean, all of this --  
4 well, I'll get there. Show you what's been marked as  
5 Defendant's Exhibit 1. Can you tell us what that is,  
6 please?

7 A. This looks to be a screen shot or some  
8 graphical representation of what would appear to be an  
9 event that occurred at -- on -- or sorry -- May 8th,  
10 2009, at 9:06 PM.

11 Q. And does it indicate that the machine had gone  
12 -- was asleep? And this is UTC time up here, right?

13 A. Correct.

14 Q. This would be machine time, right?

15 A. I would agree with that, yes.

16 Q. And this shows that the first time that the  
17 machine was awakened was on May the 8th at 9:06 and  
18 43 seconds, correct?

19 A. Correct.

20 MR. JAMES: We offer Defendant's Exhibit 1,  
21 your Honor.

22 THE COURT: Defendant's Exhibit 1 is  
23 admitted.

24 Q. (BY MR. JAMES) Did you ever check the system  
25 event log to see when the computer was opened or when it

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1 was awakened and when it went to sleep?

2 A. Yes, sir.

3 Q. What did you find -- that was the system event  
4 log, correct?

5 A. Well, that appears to be the one that I looked  
6 at as well, yes, or similar.

7 Q. And does it indicate it went to sleep at what  
8 would be on May the 7th and was awakened at 9:06?

9 A. On May the 8th?

10 Q. Yes.

11 A. Yes, I would agree that was the entry in the  
12 log.

13 Q. You knew that yesterday?

14 A. Yes, sir.

15 Q. And you didn't volunteer that information  
16 either yesterday, did you? I said yesterday. I'm  
17 talking about the last time we had a hearing.

18 A. I understand. I'm not sure that --

19 Q. You weren't asked?

20 A. No, sir.

21 Q. Did you think it was important? You knew it  
22 was important, didn't you?

23 A. Again, I would ask how you define what's  
24 important? Important in what respect?

25 Q. Let me ask you something. You answered under

1 oath -- and you know all this really is smoke and  
2 mirrors. But what is really important, you were asked  
3 under oath if there was any indication that music was in  
4 any way dragged onto that computer. And you said no.  
5 Is that still your testimony?

6 A. Yes, sir.

7 Q. That is really what all this is about. Was  
8 there music put onto that computer? Your answer is no.  
9 Was there music deleted off of that computer that night?

10 A. Which night?

11 Q. May 8th.

12 A. There's no indication that I was able to find  
13 of that.

14 Q. So all this other stuff that we've been talking  
15 about -- if Dawn Killian said that she dragged music  
16 onto that computer, that's just not correct. There's no  
17 evidence of that, is there, at all?

18 A. That she dragged music onto that computer?

19 Q. Yes, sir.

20 A. I have not been able to find evidence of that.  
21 That's correct.

22 Q. You knew that was important when Mr. Phelps was  
23 asking you that the other day and you didn't volunteer  
24 that information either, did you, Mr. Odom?

25 A. Again, which question are we speaking to

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1 specifically?

2 Q. Did you ever volunteer when Mr. Phelps in the  
3 pursuit of justice was asking you questions? Did you --

4 MR. PHELPS: Your Honor, I'm going to  
5 object to obvious sidebar and --

6 MR. JAMES: Your Honor, he's been  
7 "sidebarring" this whole hearing.

8 MR. PHELPS: This is argumentive. He's  
9 asking him questions that, I think, are improper with  
10 given his scope.

11 THE COURT: Overruled.

12 Q. (BY MR. JAMES) Did you ever volunteer that  
13 information during Mr. Phelps' direct exam?

14 A. No, sir.

15 MR. JAMES: One moment, sir.

16 THE COURT: Yes, sir.

17 MR. JAMES: Pass the witness.

18 CROSS-EXAMINATION

19 BY MR. PHELPS:

20 Q. Mr. Odom, did you check Mr. Baird's computer to  
21 find out whether the internal clock was consistent with  
22 the actual time?

23 A. Yes, I did.

24 Q. And what's the result?

25 A. That the clock is actually an hour off from

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1 actual time. It's an hour ahead.

2 Q. So if the internal clock says 9:15, the actual  
3 Texas time that it occurred would have been 8:15?

4 A. That's correct.

5 Q. And in your opinion based on the IP address  
6 location, the IP address for this Web site mpwh.net is  
7 Albany?

8 A. That's my opinion.

9 Q. If you know, are they an hour ahead of us?

10 A. I understand Albany is an hour ahead, yes.

11 Q. So there's some correlation between the times  
12 on this chat and the time on the computer clock?

13 A. The internal computer clock, yes, they're  
14 consistent.

15 Q. And both those are an hour ahead?

16 A. That would be correct.

17 Q. And with respect to what Mr. James was talking  
18 to you about the gallery view, I want to make sure that  
19 --

20 MR. PHELPS: May I approach the board, your  
21 Honor?

22 THE COURT: Yes, sir.

23 Q. (BY MR. PHELPS) Just a couple of things I want  
24 to establish. First of all, if I am looking at that  
25 recycle bin, am I just looking at a screen? And correct



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1 me if I'm wrong, but are there usually little buttons up  
2 here that are like -- be like lines. Then something  
3 else be will be -- so if you push this button, it's  
4 text. If you push this button, it's what they call  
5 gallery view so you see the thumbnails.

6 A. Yes. It's similar to that. It's actually one  
7 button that allows you to click, and it changes the type  
8 of view.

9 Q. Okay. So it just toggles?

10 A. Effectively, yes.

11 Q. So if I get rid of this, does it take one click  
12 to get into the recycle bin?

13 A. Yes, sir.

14 Q. That's the trash can on the --

15 A. Trash can icon that would be on the desktop.

16 Q. And then depending on how that toggle is set,  
17 when I go in there, I can see lines of text; is that  
18 right?

19 A. That's one option, yes.

20 Q. And if the computer is toggled to that, that's  
21 what you are going to see, right?

22 A. That's correct.

23 Q. When I asked you about this initially, did you  
24 or somebody in our office generate if it had been text  
25 mode what the spreadsheet of those documents?



1 A. I'm sorry. Can you repeat that question?

2 Q. Terrible question. I'm sorry. Do you  
3 recognize that?

4 A. Yes, this is a representation of the files that  
5 were in the -- that are in the recycle bin.

6 Q. So if you were to click on this button for text  
7 or the recycle bin and it was set that way, you would  
8 see these files in that form roughly?

9 A. Roughly, yes. Not exactly. But close.

10 Q. But you could read the file names?

11 A. Correct.

12 MR. PHELPS: Your Honor, I'll offer State's  
13 Exhibit 9.

14 MR. JAMES: No objection.

15 THE COURT: Nine is admitted.

16 Q. (BY MR. PHELPS) Now, there are a number of  
17 files here. File names are on the left. So if you were  
18 to just pop this up and it was in this mode, would you  
19 be able to read "10-year-old boy with 17-year-old  
20 boyfriend"?

21 A. Yes, you would.

22 Q. Would you be able to read "Boy Scout David part  
23 three"?

24 A. Yes.

25 Q. "Ten-year-old boy." That's part two of that

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1 other one. I'm not going to go through all of them, but  
2 there are a number of obviously suspicious titles, are  
3 there not?

4 A. Yes, I would have to agree with that.

5 Q. And by obviously suspicious, I mean potentially  
6 child pornography?

7 A. Yes, sir.

8 Q. So somebody who, if the computer was in this  
9 mode, just clicked on that recycle bin, they would be  
10 able to read those files like that?

11 A. By name, yes.

12 Q. If they clicked on this button to toggle it,  
13 would it turn it into gallery view showing thumbnails?

14 A. That's also another option.

15 Q. That's not the same as opening a folder, is it?

16 A. No, sir. The folder is already open.

17 Q. And the folder is the recycle bin?

18 A. Right.

19 Q. So to get to here, you click one time. Well,  
20 there's a trash -- it's usually over there, is it not?  
21 I don't know what it looks like, but usually a trash bin  
22 can icon in the corner. You click on that. You go  
23 here, right?

24 A. Yes, sir.

25 Q. Potentially, depending on how it's toggled, you

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1 can either see this listing of names or you can see some  
2 names, right?

3 A. Right.

4 Q. Most -- well, if you see the text, all you have  
5 to do is toggle it. It turns into the thumbnails,  
6 correct?

7 A. Correct. That is one of the option.

8 Q. Would you see thumbnails without having to open  
9 up some other file somewhere else?

10 A. Yes.

11 Q. So when Dawn Killian -- Mr. James asked you  
12 about that -- talked in that chat about opening a  
13 folder, she wouldn't have to open a folder other than  
14 the recycle bin to look at those thumbnails, would she?

15 A. That's correct.

16 Q. And, in fact, there are files here, these  
17 images that we've marked, that are -- that she described  
18 to the police department and they put in their search  
19 warrant affidavit. Do you recall that?

20 A. Yes, I do.

21 Q. And you've looked at those?

22 A. Yes, I have.

23 Q. And those are in here, are they not?

24 A. Yes, they are.

25 Q. So when we're talking about time lines, if the

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1 computer says 6:06, which is the thing you identified  
2 yesterday as being consistent with a CD put into a  
3 computer, that it would be 5:06?

4 A. The actual time would be 5:06.

5 Q. Just so that we have kind of a quick time line  
6 of what we know, I think, and it's not disputed, you  
7 indicate that there is something the computer says it's  
8 6:06. But you said it's an hour ahead. So let's just  
9 say 5:06. That's when that whatever it was indicates  
10 that possibly a CD was put in?

11 A. A file being accessed, yes.

12 Q. And along this time line, the chat post says  
13 8:42, right, the initial thread?

14 A. Yes, sir.

15 Q. Started at 8:42?

16 A. Correct.

17 Q. According to, presumably, Albany time, right?

18 A. The server in Albany, correct.

19 Q. So our time would have been 7:42?

20 A. In actuality, yes.

21 Q. And could that have been started on another  
22 computer?

23 A. Yes.

24 Q. And, in fact, is there any evidence that it was  
25 started on Mr. Baird's computer?

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1 A. No, there's none.

2 Q. So it was started on another computer?

3 A. (Moving head up and down.)

4 MR. JAMES: Objection, your Honor. He says  
5 there's no evidence it was started there. He says,  
6 well, then it was started somewhere.

7 MR. PHELPS: On another computer.

8 MR. JAMES: If you are asking him was it,  
9 rather than making a conclusory statement. Ask him if  
10 it was. That's fine.

11 MR. PHELPS: I don't think you're  
12 listening, but I'll try and --

13 MR. JAMES: I don't think you're making  
14 your questions very good, Mr. Phelps.

15 Q. (BY MR. PHELPS) According to the chat thread,  
16 this would have been started at 7:42 started this time?

17 A. That's correct.

18 Q. From the evidence we have was actually started  
19 on another computer; is that right?

20 A. I would agree with that.

21 Q. It was not started on Gregg Baird's computer?

22 A. It was not.

23 Q. Could you agree with their expert that it could  
24 have been done on iPhone?

25 A. Yes.

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1 Q. iPhones, do they have access to the web?

2 A. Yes.

3 Q. The chat indicates at 9:14, which would be 8:14  
4 our time, is when Dawn Killian says, "I open one video.  
5 It confirms child porn." Does that comport with your  
6 review?

7 A. I recall that from the chat.

8 Q. Yeah, and it's in evidence. And then the  
9 computer says our time because it's an hour ahead, as you  
10 said. Eight-fifteen is when the video was accessed, the  
11 one video that was accessed on this computer. Do you  
12 agree with that?

13 A. Yes, sir.

14 Q. Computer says 9:15, but the computer is an hour  
15 ahead; is that right?

16 A. Correct.

17 Q. And then according to, I think everything we've  
18 been talking about, 8:54 -- the computer says 9:54 --  
19 but it's an hour ahead -- is when on the defendant's  
20 computer Internet is accessed the first time, right?

21 A. That's what I recall for the first time, yes.

22 Q. So is this basically a fairly accurate time  
23 line based on what we know?

24 A. Of the key events that evening, yes.

25 Q. Based on what you've done and based on you were

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1 here for their expert's testimony?

2 A. Yes, sir.

3 Q. Okay. And we had some discussion, I did, with  
4 their expert about her opinion day before yesterday that  
5 that 5:06 event on the computer I think she said was an  
6 update but could have been an update. Do you agree with  
7 that?

8 A. That it could have been an update?

9 Q. Yes, sir.

10 A. I don't believe that it was.

11 Q. Why not?

12 A. Because there was no other activity that is  
13 indicative that it was an update.

14 Q. And how do you judge that? How do you --

15 A. For the particular file that the access time  
16 was updated on, that file is -- I'm sorry -- I'm getting  
17 this by name -- MCE Spotlight by DLL -- or CAB. Sorry.  
18 C-A-B. It's a container file, a file that contains  
19 other files, and the only way that typically is going to  
20 be accessed is through some windows or other application  
21 accessing that. If it were in the course of being  
22 updated, then it would have to access a program called  
23 MC update.

24 And so I reviewed the access times for MC  
25 update on Mr. Baird's computer. And there was no access



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1 to that file during that time, and, in fact, none at all  
2 during that day.

3 Q. And why is that significant with respect to  
4 that particular entry at 5:06?

5 A. Because that would have to be the file that  
6 would be accessed to update this particular file.

7 Q. So in your opinion was that an update?

8 A. No.

9 Q. And there was some discussion, and I just want  
10 to clear this up, with Mr. James about Ms. Killian  
11 changing the settings on the computer. When we talk  
12 about just clicking that button, the toggle, is that  
13 changing the settings on the computer? Can you explain  
14 that to the judge?

15 A. It's, in fact, changing the settings for the  
16 user that's accessing that computer. So it would, in  
17 fact, be a temporary type of view while that folder was  
18 being viewed.

19 Q. So is it making any permanent changes to the  
20 computer at all?

21 A. Through that process, no.

22 Q. And, correct me if I'm wrong, but is it simply  
23 a toggle that changes the way you view what you're  
24 looking at?

25 A. Yes.



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1 Q. So pop-up that recycle bin. Shows up text. If  
2 you want to look at thumbnails that go along with that,  
3 you just hit that button?

4 A. Yes.

5 Q. In your experience are there varying levels of  
6 experience and familiarity with computers from person to  
7 person?

8 A. Certainly.

9 Q. Can some people say something about a computer  
10 and it turn out not to be the actual thing that is  
11 happening on the computer, like I went into a folder and  
12 it's just clicking that toggle? Does that make sense?

13 A. I guess so. Generally speaking, I would have  
14 to agree. Yes.

15 MR. PHELPS: That's all I have, your Honor.  
16 Pass the witness.

17 MR. JAMES: Judge, could I have five  
18 minutes?

19 THE COURT: Yes, sir. Take a five-minute  
20 break.

21 (Break was had from 3:16 PM to 3:27 PM.)

22 THE COURT: All right. We ready to  
23 proceed?

24 MR. PHELPS: Yes, sir.

25 THE COURT: Go ahead.

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1 MR. PHELPS: I have just one more question  
2 of Mr. Odom. May I approach, your Honor?

3 THE COURT: Yes, sir.

4 Q. (BY MR. PHELPS) Mr. Odom, we just went through  
5 this time line on the board. Let me show you what I  
6 marked as State's Pretrial Exhibit No. 10. Do you  
7 recognize that?

8 A. Yes, sir, I do.

9 Q. Now, is that basically a chart that I put  
10 together and showed you earlier?

11 A. Yes, to corroborate the times.

12 Q. And you got a chance to take a look at it. Is  
13 it based upon your examination of the computer, your  
14 examination of the chat log, and other information I  
15 think that's been introduced in this hearing?

16 A. Yes, sir.

17 MR. PHELPS: Your Honor, I'll offer State's  
18 Exhibit Pretrial 10.

19 MR. JAMES: The only thing I would point  
20 out -- on voir dire, your Honor?

21 THE COURT: Yeah.

22 VOIR DIRE EXAMINATION

23 BY MR. JAMES:

24 Q. This says, on what he prepared, evidence CD put  
25 in. You said possible CD. You don't know if the CD was

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1 put in at that point, do you, at 5:06?

2 A. Specifically, no, sir.

3 Q. And if it was, there was certainly no evidence,  
4 it was downloaded onto the desktop, is there?

5 A. No, sir.

6 Q. And there's no evidence that it was ever erased  
7 from the desktop, is there?

8 A. No, sir.

9 MR. JAMES: Then I have no objection.

10 MR. PHELPS: I actually wrote in possible  
11 CD.

12 MR. JAMES: Now with that understanding,  
13 Judge, I have no objection.

14 THE COURT: That's ten?

15 MR. PHELPS: Yes, sir. I wanted to  
16 memorialized what we had there.

17 THE COURT: Yeah, ten it is.

18 MR. PHELPS: That's all I have.

19 MR. JAMES: We have nothing further.

20 THE COURT: You can step down, sir.

21 MR. JAMES: Call Gregg Baird.

22 (The witness was duly sworn.)

23 GREGG BAIRD,

24 having been first duly sworn, testified as follows:

25 DIRECT EXAMINATION

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1 BY MR. JAMES:

2 Q. Would you state your name?

3 A. Gregg Baird.

4 Q. Mr. Baird, all these discussions I think we can  
5 all -- I think we can all agree and stipulate this all  
6 happened at your house with your computer; is that  
7 correct?

8 A. Yes.

9 Q. Now, let me ask you, sir, how old a man, are  
10 you?

11 A. Thirty-nine.

12 Q. And what's your -- where were you working prior  
13 to this?

14 A. Aggeland Credit Union.

15 Q. What's your educational history?

16 A. I have a master's in international trade, MBA  
17 in international trade, and an undergraduate degree in  
18 finance.

19 Q. Now, in May of last year, were you going to  
20 take a trip?

21 A. Yes.

22 Q. Where were you going?

23 A. Panama.

24 Q. Who were you going with?

25 A. My family.

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1 Q. Is that your parents that you were --

2 A. Yes.

3 Q. And did you have a dog?

4 A. Yes.

5 Q. What's the dog's name?

6 A. Copper.

7 Q. And what were you going to do with that dog?

8 A. I was looking at leaving him at home with a pet  
9 sitter.

10 Q. Who was going to be the pet sitter?

11 A. Dawn Killian.

12 Q. Did she come to your house?

13 A. Yes, she did.

14 Q. And did you essentially introduce her to your  
15 dog and that sort of thing?

16 A. Yes.

17 Q. What did you tell her about your bedroom door?

18 A. I told her my bedroom door should remain shut.

19 Q. And where was the computer involved in this  
20 case?

21 A. In my bedroom.

22 Q. Did you ever take her into your bedroom, show  
23 her your bedroom, or anything else?

24 A. I never took her into my bedroom or my  
25 bathroom.

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1 Q. Did you ever tell her she could have whatever  
2 she wanted or use whatever she wanted?

3 A. No, I did not.

4 Q. Did you tell her she could have whatever food  
5 she wanted?

6 A. Yes. In fact, we made arrangements about the  
7 type of food she wanted before she arrived.

8 Q. Did you ever give her any indication she could  
9 enter your bedroom?

10 A. Never.

11 Q. Did you ever give her any indication she could  
12 record any CDs?

13 A. No.

14 Q. Did you ever give her any indication she could  
15 use your computer?

16 A. No.

17 Q. Did you ever give her any indication that she  
18 could access any user-generated files such as recently  
19 opened or deleted files?

20 A. No.

21 Q. Did you ever have an expectation of privacy in  
22 that computer located in your bedroom?

23 A. Yes.

24 Q. Are you asserting today that privacy and  
25 objecting to her actions vis-a-vis your computer?

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1 A. Yes.

2 MR. JAMES: Pass the witness.

3 CROSS-EXAMINATION

4 BY MR. PHELPS:

5 Q. Mr. Baird, my name is Shane Phelps. I'm the  
6 prosecutor in the case. I just have a few questions for  
7 you.

8 First of all, there's no question you  
9 invited her to stay in your home for the period you were  
10 in Panama, correct?

11 A. Correct.

12 Q. You also have a roommate, do you not?

13 A. Yes.

14 Q. You were in Panama, or were going to be in  
15 Panama, correct me if I'm wrong, from May 7th to  
16 May 17th? Is that roughly the dates, or am I wrong?

17 A. I believe May 8th through the 17th. But the  
18 same, yes.

19 Q. So on May 7th -- did you leave on May 7th?

20 A. Left on May 7th.

21 Q. By leaving on May 7th, did you leave your house  
22 or did you actually get on a plane and go to Panama?

23 A. Left my house on the 7th.

24 Q. Where did you go from there?

25 A. To my parents' house.

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1 Q. Which is where?

2 A. In Spring.

3 Q. That's near Houston?

4 A. Yes.

5 Q. Did your plane leave the next day?

6 A. Yes.

7 Q. So you actually left on May 8th in terms of  
8 getting on a plane and going to Panama?

9 A. Yes.

10 Q. Your plane came back on the 17th?

11 A. I believe so.

12 Q. Did you make any stops on the way? Did you get  
13 out to the airport and come straight home?

14 A. Once the plane landed, I dropped my parents off  
15 at their house and returned home.

16 Q. So no question you actually invited Dawn  
17 Killian to come stay in your home?

18 A. Yes.

19 Q. That was the agreement, correct?

20 A. Yes.

21 Q. Now, with respect to your bedroom, does your  
22 bedroom door have a lock on it?

23 A. I believe it locks from the inside, yes. I  
24 believe it has that capability. I'm not certain though.

25 Q. But you didn't lock your bedroom door?



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1 A. No.

2 Q. Now, you indicated you told her the bedroom  
3 door should remain shut. You never told her she could  
4 not go into your bedroom. Is that correct?

5 A. Correct.

6 Q. The idea of keeping the bedroom door shut  
7 really had to do about keeping the dog out while she was  
8 not there; is that right?

9 A. True.

10 Q. And the dog actually hangs a lot in your  
11 bedroom, doesn't it?

12 A. Not when I'm not at home.

13 Q. But when you're home?

14 A. Typically in the room I am.

15 Q. Dog stay asleep in your bedroom?

16 A. Most of the nights.

17 Q. So your dog is pretty comfortable. It's one of  
18 those places in your house he spends a lot of time?

19 A. Sure.

20 Q. So no question you never told Dawn, "Do not go  
21 into my bedroom"?

22 A. I never stated -- I told Dawn to keep the  
23 bedroom door shut.

24 Q. And that was in connection with keeping the dog  
25 out of there when she wasn't in there? Yes or no?

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1 A. Correct.

2 Q. Your computer is in your bedroom?

3 A. Yes.

4 Q. Is it just pretty much out there in plain view?

5 A. You can't see it from the main area of the  
6 house.

7 Q. Is it enclosed in an armoire or any kind of  
8 cabinet?

9 A. No.

10 Q. So if somebody were walking into your bedroom,  
11 they'd be able to find your computer pretty easily?

12 A. Yes.

13 Q. You never told Dawn that she could not get on  
14 your computer?

15 A. I never mentioned my computer to Dawn at all.

16 Q. So you never told her, "Dawn, I really don't  
17 want you on my computer"?

18 A. Never said that.

19 Q. You never made any limitations whatsoever  
20 expressly to Dawn about getting on a computer or doing  
21 anything at all on your computer?

22 A. Again, I never mention the computer to Dawn.

23 Q. Now, your roommate has access to your computer,  
24 does he not?

25 A. He would.

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1 Q. So at least with respect to your roommate, he  
2 can come into your room any time and get on your  
3 computer. Is that accurate?

4 A. That's a fair statement.

5 Q. In fact, there's a file on Andrew's stuff,  
6 correct?

7 A. Correct. That's a file I generated. Not  
8 Andrew.

9 Q. Okay. With respect to the statement -- you  
10 heard Dawn Killian testify you said something to the  
11 effect of help yourself to anything?

12 A. I never said that.

13 Q. You heard her say that, right?

14 A. I did.

15 Q. What do you remember her saying that she must  
16 be referring to?

17 A. I'm sorry. I don't understand your question.

18 Q. Are you saying that no conversation like that  
19 took place at all, or are you simply telling the judge  
20 that it wasn't in reference to anything in the house?  
21 Does that make sense?

22 Let me ask this: I think you were present  
23 in the courtroom when Mr. James asked Dawn Killian when  
24 he said, "Help yourself to anything," you were referring  
25 to the refrigerator. Do you recall that?

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1 A. No.

2 Q. Did she say or did you tell her anything to the  
3 effect "Help yourself to anything in the house or help  
4 yourself"?

5 A. I told her -- I was very specific -- I said,  
6 "You can help yourself to any food you find." And, in  
7 fact, before her visit to the house, we arranged -- I  
8 arranged the type of beer she wanted and asked her if  
9 there was any particular food she would like while she  
10 was at the house.

11 Q. You wanted her to feel comfortable in your  
12 home?

13 A. Yes.

14 Q. So something like "help yourself" at least  
15 those two words were said, right, by you?

16 A. Very specifically I told her -- my quote was,  
17 "Please help yourself to any food you find." At the  
18 time I pointed to the refrigerator.

19 Q. Was it clear to you from being present in the  
20 courtroom when Dawn William testified that what she  
21 heard, or at least what she says you said was, "Help  
22 yourself to anything in the house"?

23 A. She apparently doesn't remember what happened.

24 Q. Okay. Now, you have the ability to turn your  
25 computer off, do you not?

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1 A. Correct.

2 Q. And you did not do that on this occasion?

3 A. I thought I had.

4 Q. You thought you had?

5 A. Yes.

6 Q. Is it your sworn testimony that you had a  
7 conscious decision you had made to turn your computer  
8 off?

9 A. Yes, I thought I had turned my computer off.

10 Q. But, in fact, it was not turned off. Do you  
11 agree with that?

12 A. I agree with that.

13 Q. If any person had wandered in there like Dawn  
14 Killian, what she would have seen when she shook the  
15 mouse was your computer would come awake? Do you agree  
16 with that?

17 A. No. She would have to turn the monitor on as  
18 well.

19 Q. You have a recollection of turning the monitor  
20 off?

21 A. Yes.

22 Q. Okay. Did you tour her around the house? Did  
23 you show her around the house?

24 A. Yes, I did.

25 Q. I presume showed her the kitchen?

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1 A. Correct.

2 Q. Bathroom?

3 A. Correct.

4 Q. Guest room?

5 A. Correct.

6 Q. Showed her where your roommate lived in his  
7 study?

8 A. I pointed to it.

9 Q. Showed her the living room?

10 A. Correct.

11 Q. Any other place? A garage? Anything like  
12 that?

13 A. I took her to the garage because that's where  
14 the dog food is.

15 Q. Your testimony is you took her pretty much  
16 everywhere or showed her everywhere but you did not take  
17 her into your bedroom?

18 A. Correct.

19 Q. Was it your intention that your dog not be  
20 allowed in that bedroom for that entire ten days?

21 A. Correct.

22 Q. Did you tell her that?

23 A. Yes.

24 Q. Exactly what words did you use to convey?

25 A. I told her I didn't want the dog -- Copper had

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1 separation anxiety sometimes. I didn't want him in my  
2 bedroom.

3 Q. Actually, wouldn't him being able to go in your  
4 bedroom help the separation anxiety?

5 A. I'm not a dog psychologist. I couldn't answer  
6 that.

7 Q. But your recollection now is that you  
8 specifically told her, "I don't want Copper in my  
9 bedroom"?

10 A. Correct.

11 Q. Even though that's a place that Copper spent a  
12 lot of time?

13 A. When I'm home, he does.

14 Q. You did show her how to use the television?

15 A. Correct.

16 Q. Showed her how to use the stereo?

17 A. Yes.

18 Q. Your CDs were in plain site?

19 A. Yes.

20 Q. You didn't tell her she couldn't use the CDs?

21 A. No.

22 Q. In fact, you showed her how to use stereo,  
23 right?

24 A. Correct.

25 Q. Showed her how to use the remotes?

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1 A. Correct.

2 Q. Do you remember anything else about what you  
3 showed her to kind of get her comfortable and orient her  
4 to your home?

5 A. I believe that you mentioned the high points,  
6 yes.

7 Q. Anything else you remember?

8 A. No.

9 Q. After you got home, you discovered that a  
10 search had been conducted at your home?

11 A. Correct.

12 Q. And you left, did you not?

13 A. Correct.

14 Q. In fact, you were ultimately arrested in  
15 Alpine?

16 A. Correct.

17 Q. At some point you communicated with Dawn  
18 Killian by e-mail?

19 A. I believe so.

20 Q. Did you ask her to take care of your dog  
21 Copper?

22 A. I do not remember.

23 Q. You don't remember the e-mail you sent?

24 A. No.

25 Q. Do you remember writing down, "Get off the road



1 her parents pay her \$5,000"?

2 A. I'm not disputing that. That area, that  
3 24 hours of my life is very fuzzy.

4 Q. So you're not saying it didn't happen?

5 A. Correct.

6 Q. Was it your intention that Dawn Killian adopt  
7 your dog?

8 A. If that's what the e-mail said, sure.

9 Q. Well, I'm just asking if you recollect that? I  
10 mean --

11 A. I don't recollect that e-mail exactly.

12 Q. You did spend some time thinking about what was  
13 going to happen to your dog, right?

14 A. Sure.

15 MR. PHELPS: That's all I have. Pass the  
16 witness.

17 REDIRECT EXAMINATION

18 BY MR. JAMES:

19 Q. Mr. Baird, next with keeping that door closed,  
20 you didn't want your dog going in but you didn't want  
21 Dawn Killian going in your bedroom either?

22 A. Correct.

23 RECROSS-EXAMINATION

24 BY MR. PHELPS:

25 Q. But you didn't tell her not to go in, did you?